



Senior Legal Hotline

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SENIOR LEGAL FACT SHEET

Estate planning myths and traps

It's only natural to be concerned for the future: We want to live out our lives as we choose but without becoming a burden on others. We want to receive what we're entitled to, and we'd like to know that whatever is left will go to loved ones or a favorite cause.

The whole area of planning for later life and for death is full of traps. Many people are led to take foolish steps when well-meaning friends repeat "facts" they've heard that turn out not to be true. Even worse, there is no shortage of clever salespeople who make a great living by scaring seniors into buying expensive trusts that are of little use for them, annuities or other insurance products that make no sense, high-risk investments and equity loans that put a borrower's home in danger.

Below, very briefly, are some of the most common myths and traps.



To find out more about any of these subjects, call or e-mail the Senior Legal Hotline or another reliable source of unbiased legal advice. The hotline also has more detailed written guides on some of the subjects mentioned.

LIVING TRUSTS: NOT FOR EVERYONE

The main reason to have a living trust is so the people who will inherit your property will not have to go through probate court to complete the process. If you own real property worth more than \$100,000, this may make sense, but read on:

- ▶ Probate can be avoided easily for many other types of property, including bank accounts, most investments and most personal property, without a trust and without losing any control of the property during your lifetime.
- ▶ Except for some very large estates, a trust will not avoid taxes.
- ▶ Property in a living trust is not protected from Medi-Cal estate recovery.
- ▶ Beware of trust mills that try hard to entice you into buying trusts. Even if the prices seem low, their main goal may be to learn about your assets and sell you other things you truly don't need, like annuities, insurance policies, equity loans or dubious investments.
- ▶ If you decide to setup a living trust make sure to do so through an ethical attorney, preferably who practices estate planning law. But keep in mind that a trust may cost you more than the probate process would cost your heirs.

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- ▶ Administering a trust correctly is complicated; many a fancy-looking one has turned out to be worthless because the buyer didn't know what to do with it.
- ▶ Using a trust takes an estate out of the court. That just might make it easier for someone to cheat others out of their share with no judge looking on.
- ▶ For many people, a simple will you can make yourself with good legal advice will do as well as or better than a trust.

ADDING SOMEONE TO TITLE IS GIVING AWAY PROPERTY

Adding someone's name to the title of your house is an easy way to pass it to that person after your death, but for many people, it proves to have been too easy:

- ▶ The other person has rights equal to yours – no matter that you paid for it. He or she could even decide to move in with you, like it or not.
- ▶ You can't just change your mind about sharing title unless the other person agrees.
- ▶ Nor can you change your mind by leaving it to someone else in your will or trust. At most, you can give half to someone else. But have you ever tried to sell half a house?
- ▶ Someone who sues your co-owner could interfere with your ownership rights.
- ▶ It could keep you from qualifying for some valuable discounts, tax breaks or loans available to low-income homeowners.
- ▶ It may cause higher property taxes for your co-owner.

DON'T LET NURSING HOME FEARS LEAD YOU ASTRAY

No one wants to spend the end of life in a nursing home, but for some of us it will be a necessity. They are extremely expensive, and Medicare covers very little. Some thought and planning is a good idea, but don't let anyone mislead or scare you into one of many common mistakes:

- ▶ Most people spend very little or no time in nursing homes at the end of life, so don't make drastic moves when you're healthy based on the pressure of "What if?"
- ▶ Long-term care insurance with full coverage, home-care options and inflation protection is very expensive and makes little sense financially for most people.
- ▶ Annuities are tricky -- and are usually most beneficial for the people who sell them.
- ▶ Don't be pressured into giving away property to qualify for Medi-Cal without expert advice. There's a lot you can keep; you may actually disqualify yourself; and remember: once you give it away, it's no longer yours.
- ▶ Yes, the state will want to be paid back after your death for Medi-Cal benefits you received, but there are many ways to deal with this if and when it makes sense. Consider making arrangements through a power of attorney so someone else can take care of your property if you are unable to do so. But be very careful and get solid legal advice before you grant a power of attorney.
- ▶ Laws could easily change in the future. If you plan too far ahead, what seems like a smart move today may prove unnecessary or even foolish.

If you are over 60 in California, you can get free advice by phone from the Senior Legal Hotline regarding your questions about estate planning, trusts, powers of attorney, Medi-Cal, long-term care or any other legal issue. Hours of operation are Mon.-Fri. 9 to 12 and 1 to 4, and until 7 p.m. on Thursdays. You can also submit your question by e-mail from our web site, www.seniorlegalhotline.org.